

**ASSEMBLY BILL**

**No. 2605**

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**Introduced by Assembly Member Cedillo**

February 24, 2012

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An act to amend Sections 42403, 42403.5, and 42405 of the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

AB 2605, as introduced, Cedillo. Air pollution control: penalties.

Existing law designates the State Air Resources Board as the state agency charged with coordinating efforts to attain and maintain ambient air quality standards. Existing law also designates the state board as the state agency with the primary responsibility for the control of vehicular air pollution. Existing law requires the state board to identify toxic air contaminants that are emitted into the ambient air of the state, and requires the state board to establish toxic control measures for toxic air contaminants. Existing law requires specified civil penalties be assessed and recovered in a civil action for specified violations to be brought by the Attorney General, by any district attorney, or by the attorney for any air pollution control or air quality management district in which the violation occurs. Existing law requires, if the action for civil penalties resulting from specified violations is brought by a district attorney or by an attorney for a district, the entire amount of the penalty collected be paid to the treasurer of the district on whose behalf judgment was entered.

This bill would require any city attorney of a city having a population in excess of 750,000, any city attorney of a city and county, or a city prosecutor in any city with a full-time city prosecutor, with the consent of the district attorney, to recover specified civil penalties in a civil

action for specified violations. The bill would require, if the action for civil penalties resulting from specified violations is brought by a district attorney, an attorney for a district, a city attorney of a city having a population in excess of 750,000, a city attorney of a city and county, or a city prosecutor in any city with a full-time city prosecutor, with the consent of the district attorney, the entire amount of the penalty collected be paid to the treasurer of the city, county, or city and county in addition to the district on whose behalf judgment was entered.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 42403 of the Health and Safety Code is  
2     amended to read:  
3     42403. (a) The civil penalties prescribed in Sections 39674,  
4     42401, 42402, 42402.1, 42402.2, ~~and~~ 42402.3, *and* 42402.4 shall  
5     be assessed and recovered in a civil action brought in the name of  
6     the people of the State of California by the Attorney General;; by  
7     any district attorney;; *by any city attorney of a city having a*  
8     *population in excess of 750,000; by any city attorney of a city and*  
9     *county; by a city prosecutor in any city with a full-time city*  
10    *prosecutor, with the consent of the district attorney; or by the*  
11    attorney for any district in which the violation occurs in any court  
12    of competent jurisdiction.  
13    (b) In determining the amount assessed, the court, or in reaching  
14    any settlement, the district, shall take into consideration all relevant  
15    circumstances, including, but not limited to, the following:  
16    (1) The extent of harm caused by the violation.  
17    (2) The nature and persistence of the violation.  
18    (3) The length of time over which the violation occurs.  
19    (4) The frequency of past violations.  
20    (5) The record of maintenance.  
21    (6) The unproven or innovative nature of the control equipment.  
22    (7) Any action taken by the defendant, including the nature,  
23    extent, and time of response of the cleanup and construction  
24    undertaken, to mitigate the violation.  
25    (8) The financial burden to the defendant.  
26    SEC. 2. Section 42403.5 of the Health and Safety Code is  
27    amended to read:

1 42403.5. (a) Notwithstanding Section 42407, any violation of  
2 Section 41700 resulting from the engine of any diesel-powered  
3 bus while idling shall subject the owner to civil penalties assessed  
4 under this article, which may be recovered pursuant to Section  
5 42403 by the Attorney General;; by any district attorney;; *by any*  
6 *city attorney of a city having a population in excess of 750,000;*  
7 *by any city attorney of a city and county; by a city prosecutor in*  
8 *any city with a full-time city prosecutor; with the consent of the*  
9 *district attorney;* or by the attorney for any district in which the  
10 violation occurs in any court of competent jurisdiction.

11 (b) There is no liability under subdivision (a) if the person  
12 accused of the violation establishes by affirmative defense that the  
13 extent of the harm caused does not exceed the benefit accrued to  
14 bus passengers as a result of idling the engine.

15 SEC. 3. Section 42405 of the Health and Safety Code is  
16 amended to read:

17 42405. In an action brought pursuant to Section 42403 by the  
18 Attorney General on behalf of a district, one-half of the penalty  
19 collected shall be paid to the treasurer of the district on whose  
20 behalf judgment was entered, and one-half of the penalty collected  
21 shall be paid to the ~~State~~ Treasurer for deposit in the General Fund.

22 If the action is brought by the Attorney General on behalf of the  
23 state board, the entire penalty collected shall be paid to the ~~State~~  
24 Treasurer for deposit in the General Fund.

25 If the action is brought by a district attorney; *by any city attorney*  
26 *of a city having a population in excess of 750,000; by any city*  
27 *attorney of a city and county; by a city prosecutor in any city with*  
28 *a full-time city prosecutor; with the consent of the district attorney;*  
29 or by an attorney for a district, the entire amount of the penalty  
30 collected shall be paid to the treasurer of the *city, county, city and*  
31 *county, or* district on whose behalf judgment was entered.